



DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA-2019-0018]

RIN 1660-ZA23

Hazard Mitigation Assistance: Building Resilient Infrastructure and Communities

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) is issuing the *Building Resilient Infrastructure and Communities Policy*. This policy describes a new hazard mitigation grant program to assist States, territories, Tribes, and local governments with mitigating the impacts of natural hazards, including those created, aggravated, or amplified by climate change. The new program is funded by a FEMA 6 percent set aside of estimated disaster expenses for each major disaster, supersedes the Pre-Disaster Mitigation grant program, and promotes a national culture of preparedness through encouraging investments to protect communities and infrastructure by increasing pre-disaster hazard mitigation and strengthening national resilience.

DATES: This policy is effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: The docket for this policy is available for inspection using the Federal eRulemaking Portal at <http://www.regulations.gov> and can be viewed by following that website's instructions.

FOR FURTHER INFORMATION CONTACT: Ryan Janda, Federal Emergency Management Agency, 400 C Street, SW, Washington, DC 20472, 202-646-2659, Ryan.Janda@fema.dhs.gov. Hearing- or speech-impaired individuals may access this number through TTY by calling (800) 462-7585.

SUPPLEMENTARY INFORMATION

I. Background and Proposed Policy

On October 5, 2018, the President signed into law the Disaster Recovery Reform Act¹ (DRRA). The DRRA contains fifty-six provisions that, among other things, (1) emphasize the shared responsibility for disaster response and recovery, (2) stress the importance of building the nation's capacity to deal with coming disasters and catastrophic events, and (3) recognize the need to reduce the complexity of, and administrative burdens in, FEMA's programs. Some of the highlights of the DRRA include new and additional authorities to reduce risk from future damage after a fire, increase State capacity to manage disaster recovery, provide greater flexibility to survivors with disabilities, and retain skilled response and recovery personnel. DRRA also contains provisions directing FEMA to produce plans, guidance, and reports to clarify terms and requirements, to identify best practices, and to simplify information collection.

On April 10, 2020, FEMA published a proposed policy entitled *Building Resilient Infrastructure and Communities* (BRIC) (85 FR 20291). The BRIC policy addresses Section 1234 of the DRRA, titled "National Public Infrastructure Pre-Disaster Hazard Mitigation," which amended section 203 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), 42 U.S.C. 5121 *et seq.* Section 1234 of the DRRA authorizes FEMA to set aside 6 percent of estimated disaster expenses for each major disaster to fund the new BRIC grant program. BRIC supersedes the Pre-Disaster Mitigation (PDM) program² and promotes a national culture of preparedness through encouraging investments to protect our communities and infrastructure, strengthening

¹ Pub. L. 115-254, 132 stat. 3438.

² On September 9, 2019, FEMA posted a PDM notice of funding opportunity (NOFO) at <https://www.grants.gov/web/grants/view-opportunity.html?oppId=320395>. The NOFO clarified that fiscal year (FY) 2019 would be the last year that FEMA offered the PDM program, and that the PDM program would be superseded by BRIC in FY 2020. As the NOFO explains, the 2015 Hazard Mitigation Assistance (HMA) Guidance applies to the FY 2019 PDM grant program application cycle.

pre-disaster mitigation capabilities, and fostering national resilience. The following principles guide the BRIC program:

- Support communities through capability- and capacity-building
- Encourage and enable innovation
- Promote partnerships
- Enable large projects
- Maintain flexibility
- Provide consistency and equal treatment
- Promote equity (including by eliminating unnecessary complexity and administrative burdens)
- Adapt to the various and growing hazards associated with climate change

The BRIC Policy provides a consistent framework and standing requirements for the program. FEMA will calculate the 6 percent set aside within 180 days after each major disaster and may set aside that amount from the Disaster Relief Fund into the National Public Infrastructure Pre-Disaster Mitigation Fund.³ The total amount will vary year to year based on the estimated amount of disaster assistance for each major Presidentially-declared disaster, and the number of Presidentially-declared disasters in each year. On an annual basis, FEMA will assess the amount available in the National Public Infrastructure Pre-Disaster Mitigation Fund and determine what portion of it will be available for the next year's grant cycle. FEMA will announce this determination in the annual Notice of Funding Opportunity (NOFO),⁴ which it will post for a period of time on its website prior to opening the application period.

Section 203 of the Stafford Act limits eligible applicants to States and territories that have had a major disaster declaration in the 7 years prior to the annual application

³ 42 U.S.C. 5133(i).

⁴ 2 CFR 200.203 sets forth the requirement to post a NOFO and the required contents of a NOFO.

period start date, and federally-recognized Tribes entirely or partially located in a State that has had a major disaster declaration in the 7 years prior to the application period start date.⁵ Subapplicants include local governments and non-federally recognized Tribes,⁶ who may apply to States and territories for funding. (Note that federally-recognized Tribes may apply as either applicants or subapplicants).⁷

In addition to determining annually the total amount to be made available for BRIC, FEMA may allocate from that amount to eligible States and territorial applicants, with a specific set-aside for Tribes, an allocation for mitigation capability- and capacity-building activities and mitigation projects, and make the remainder of the funding available competitively for mitigation projects. FEMA may also make a portion of funding available for management costs (costs to manage the grant) and non-financial technical assistance to all eligible entities. Funding for capability- and capacity-building activities and mitigation projects will generally be subject to a Federal cost share of up to 75 percent, and up to 90 percent for small impoverished communities.⁸ Management costs may be funded up to 100 percent Federal share.

FEMA provides stakeholders with more detailed information about the program requirements through an annual NOFO process.⁹ The NOFO addresses a variety of topics, including but not limited to:

- Important application dates
- Specific funding amounts and allowances
- Provision of technical assistance
- Codes and standards activities
- Application review process, including competition structure and merit criteria

⁵ 42 U.S.C. 5133(g).

⁶ 42 U.S.C. 5122(8).

⁷ 42 U.S.C. 5123.

⁸ 42 U.S.C. 5133(h).

⁹ 2 CFR 200.203.

- Method for determining cost-effectiveness
- Award administration information
- Additional requirements and guidelines

The guidance does not have the force or effect of law.

II. Discussion of Public Comments on the Proposed Policy

FEMA received 147 distinct public comments to the proposed policy. These included two mass mailings comprised of 11,068 comments from members of the National Wildlife Federation Action Fund and 19,665 comments from members of the National Audubon Society. Many of the public comments included several unique topic areas, each of which FEMA analyzed separately. In total, the comments addressed 902 unique topics. Commenters included Tribes, Tribal consortiums, non-profit organizations, private citizens, municipalities, state agencies and offices, professional networks and associations, businesses, a school district and a public official.

FEMA reviewed and discussed each unique comment and considered whether to change the policy in response to the comment. Stakeholder feedback was taken into account in the design of the policy and in the updates to the policy. Because many commenters had similar comments about the same topics, FEMA organized the response to comments by topic. Some comments related to more than one topic and were therefore considered and counted under all applicable topics. A summary of these comments and FEMA's response is provided below.

Favorable Comments

FEMA received 108 favorable comments that noted direct support for the BRIC policy or program. These are summarized below.

Commenters wrote favorably about the stakeholder engagement process for the proposed policy. Many commenters expressed appreciation for the opportunity to provide comments on the proposed policy. Commenters also expressed appreciation for

the stakeholder engagement process throughout the development of the proposed policy, including the comprehensive stakeholder engagement effort that occurred in the summer of 2019. FEMA is grateful to stakeholders for their engagement throughout the development of the proposed policy; they have provided meaningful input into the development of the BRIC program.

Many commenters provided favorable comments about the BRIC program.

Commenters supported the principles of the BRIC program as follows:

Principle 1. Support State and local governments, Tribes, and Territories through capability- and capacity-building to enable them to identify mitigation actions and implement projects that reduce risks posed by natural hazards. Commenters were encouraged to see the importance of capability- and capacity-building as highlighted in the proposed policy. Commenters recognized that the continual funding for these activities will allow communities to use these funds to build and maintain capacity over time. FEMA notes the continual growth of community capacity is an intent of the BRIC program. FEMA is prioritizing that continual growth. FEMA further recognizes that the Nation's capability- and capacity-building needs will far exceed amounts available through BRIC, and intends for the allocation to support an applicant's highest priority requirements.

Principle 2. Encourage and enable innovation while allowing flexibility, consistency, and effectiveness. Commenters expressed support for the flexibility of the BRIC program, which allows not only for traditional mitigation projects, but also encourages and supports innovation. Commenters were energized and excited by the focus on innovation as a cornerstone of the proposed policy, but also stressed that traditional mitigation projects should always be eligible. FEMA notes its intent to maintain a wide variety of project type eligibility in the BRIC program.

Principle 3. Promote partnerships and enable high-impact investments to reduce risk from natural hazards with a focus on critical services and facilities, public infrastructure, public safety, public health, and communities. Commenters across all sectors expressed support for Principle 3. FEMA recognizes that many non-profits and other organizations have the capacity to assist communities in meeting non-Federal cost-share requirements and developing mitigation projects. For this reason, FEMA encourages communities to look for opportunities to partner with other organizations. Communities are best positioned to identify and develop mitigation projects for their citizens, and the communities' effort can be supported by non-profits and other organizations.

Principle 4. Provide a significant opportunity to reduce future losses and minimize impacts on the Disaster Relief Fund (DRF). Commenters expressed support for FEMA's forward-thinking approach of looking to reduce future losses. FEMA recognizes that adequately addressing future loss requires the consideration of the climate crisis and changing future conditions. FEMA will provide information on how future risk will be considered in the implementation of the BRIC program within the NOFO and program support materials.

Principle 5. Promote equity, including by helping members of disadvantaged groups and prioritizing 40 percent of the benefits to disadvantaged as referenced in Executive Order (EO) 14008 in line with the Administration's Justice40 initiative. This principle was added after the public comment period, so FEMA did not have an opportunity to receive comments on it.

Principle 6. Support the adoption and enforcement of building codes, standards, and policies that will protect the health, safety, and general welfare of the public, taking into account future conditions, prominently including the effects of climate change, and have long-lasting impacts on community risk-reduction, including for critical

services and facilities and for future disaster costs. Many commenters noted the importance of utilizing modern building codes in ensuring the resiliency of community infrastructure. FEMA strongly concurs, and encourages adoption and enforcement of, as well as require compliance with, all relevant consensus codes and standards for all projects in the BRIC program.

Commenters also expressed support for the 90 percent cost share for small impoverished communities and for the new definition of “small impoverished,” which no longer includes an unemployment metric. FEMA agrees that these changes will support small impoverished communities in need of assistance.

Information for Notice of Funding Opportunity and Program Support Materials

FEMA received 409 comments related to the NOFO and program support materials. These are summarized below.

Additional Information and Assistance. Many commenters requested additional information in the policy such as example projects, details about scoring criteria, technical assistance information, and an explanation of how funds will be allocated. FEMA appreciates the request and notes that the purpose of the policy is to provide the high-level requirements that will remain consistent in the BRIC program. Other information, such as annual allocations and scoring criteria, is more suitable for the annual NOFO as these matters relate to implementation and may change annually in the BRIC program. With the request in mind, FEMA will provide additional guidance, such as eligible project examples and information about technical assistance, in program support materials. Program support materials will include a variety of example projects ranging widely in scale and in geographic location. A central goal of those materials will be to decrease complexity and to make the various goals and requirements simpler and easier to navigate.

Types of Projects. Many commenters provided recommendations for the types of projects that FEMA should prioritize within the BRIC program. The most frequent recommendations included: projects that incorporate nature-based solutions and green infrastructure; traditional, nonstructural flood reduction measures (such as acquisitions and buyouts); and projects that leverage existing projects, plans, and partnerships. The mass mailings received from the National Wildlife Federation Action Fund and National Audubon Society promoted prioritization of nature-based solutions: the National Wildlife Federation Action Fund urged FEMA to prioritize community-wide, nature-based mitigation with pre-disaster funds, and the National Audubon Society urged FEMA to promote natural infrastructure solutions with BRIC funding. FEMA is strongly supportive of nature-based solutions and has released a Guide for Local Communities, “Building Community Resilience With Nature-Based Solutions,” on that topic. Additionally, FEMA is strongly supportive of nature-based solutions because FEMA considers these solutions to be consistent with the Federal Flood Risk Management Standard (FFRMS) under the reinstated Executive Order 13690 (Jan. 30, 2015).¹⁰ FEMA will address priorities through the NOFO, as priorities are identified on an annual basis to allow for the development and flexibility of the BRIC program over time as new priorities are identified. FEMA will provide additional information about nature-based solutions in program support materials.

Definitions

Some commenters asked FEMA to define the terms used in the proposed policy. Commenters requested definitions, or changes to existing definitions, for the following terms: “critical facilities”, “small impoverished communities”, “resiliency”, “large-scale public infrastructure”, “non-construction”, and “innovative”. FEMA appreciates the

¹⁰ On May 20, 2021, President Biden issued Executive Order (EO) 14030, *Climate-Related Financial Risk*, reinstating EO 13690, *Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input* (Jan. 30, 2015).

request and will provide definitions of new terms used in the policy in an “Additional Information” section of the policy. FEMA provides the following information to address comments:

- FEMA defines “critical facilities” in the glossary of the Hazard Mitigation Assistance (HMA) Guidance (2015)¹¹ to include structures and institutions necessary, in the community’s judgment, for response to and recovery from emergencies. Critical facilities must continue to operate during and following a disaster to reduce the severity of impacts and accelerate recovery. This definition is for HMA program use and clarification and is not meant to provide a definition for use under other programs or supersede any FEMA regulation.
- The term “small impoverished communities” is statutorily defined at 42 U.S.C. 5133(a) to mean a community of 3,000 or fewer individuals that is economically disadvantaged, as determined by the state in which the community is located and based on criteria established by the President. As the term is statutorily defined, the maximum number of community members of 3,000 cannot be exceeded.
- FEMA will use the longstanding National Institute of Standards and Technology (NIST) definition of “community resilience”¹² to define “resiliency”, which is the ability to prepare for anticipated hazards, adapt to changing conditions, and withstand and recover rapidly from disruptions. This definition of resilience is similar to the definition of “resilience” used in the Presidential Policy Directive 21 (2013).¹³ FEMA provides the definition of “resilience” in policy.

¹¹ Federal Emergency Management Agency, *Hazard Mitigation Assistance Guidance*, Feb. 27, 2015, available at https://www.fema.gov/media-library-data/1424983165449-38f5dfc69c0bd4ea8a161e8bb7b79553/HMA_Guidance_022715_508.pdf.

¹² <https://www.nist.gov/topics/community-resilience>.

¹³ <https://www.cisa.gov/sites/default/files/publications/ISC-PPD-21-Implementation-White-Paper-2015-508.pdf>.

- FEMA understands the concerns of small communities that public infrastructure size will differ for different size communities, and that small communities and large communities have different understandings of “large-scale public infrastructure” in the context of their communities. FEMA deleted the phrase “large-scale” before “public infrastructure” in the policy to avoid ambiguity or implication of a size requirement for public infrastructure.
- FEMA removed the sentence referencing “non-construction” from the policy and added a sentence to explain capability- and capacity-building activities that have already been initiated or completed are not eligible for funding. The term “non-construction” was intended to mean capability- and capacity-building activities.
- The term “innovative” should be defined by the community. FEMA will encourage communities to describe how their projects represent innovative actions.

Capability- and Capacity-Building

FEMA received 188 comments related to capability- and capacity-building.

These are summarized below. FEMA will provide more information related to capability- and capacity-building in the NOFO and additional program support materials.

Activity Types. Commenters asked how applicants may use funds for capability- and capacity-building activities. FEMA notes that eligible capability- and capacity-building activities are listed in 42 U.S.C. 5133(e)(1)(B). Capability- and capacity-building activities enable communities to identify mitigation actions and implement projects that reduce risks posed by natural hazards. These activities are broad and flexible so communities may use funds to address specific community needs, but they must clearly contribute to the capability- and capacity-building of the applicant or subapplicant to mitigate hazards. FEMA offers the following clarifications in response to questions about capability and capacity building activities:

- Eligible planning activities may include creating or updating a community's hazard mitigation plan, building codes, zoning or land use plans.
- Capability- and capacity-building funds can be used for development or updates to mitigation priorities and plans. FEMA has edited the policy to make clear that updates may also be funded.
- Non-FEMA technical assistance providers and other educational expenses for staff are eligible capability- and capacity-building activities when consistent with program requirements.
- Capability- and capacity-building funds cannot be used to simply hire staff. If capability- and capacity-building funds contribute to a salary, there must be a deliverable that is tied to that position, such as updating a community's hazard mitigation plan.
- Capability- and capacity-building funds cannot be allocated toward the administration of approved projects. Management Costs can be applied for and funded to administer approved projects.

Technical Assistance (financial). FEMA received many requests for technical assistance to implement the proposed policy, including requests for technical assistance for specific project types including microgrids, coastal zone projects, and large-scale retrofits. Commenters also asked for clarity about the types of technical assistance that will be offered and who would receive it. FEMA appreciates these comments, because they fit with FEMA's general goal of increasing clarity and reducing complexity. To that end, FEMA will provide technical assistance through program support materials and webinars that will be available to all communities, including Tribes. While FEMA does not have capacity to provide individual technical assistance to each and every community assembling an application to the BRIC program, applicants may receive individual technical assistance from their FEMA regional offices. The level of technical assistance

from FEMA regional offices might vary by region. FEMA will continue to provide benefit-cost analysis (BCA) technical assistance through the BCA Helpdesk, as well as helplines for the application system, FEMA GO, Environmental and Historic Preservation, and the HMA Program. FEMA will continue to pursue and prioritize additional opportunities to provide technical assistance in response to stakeholder feedback in future years. FEMA will also welcome continued feedback about how to improve technical assistance and make it as useful and available as possible.

Eligibility

FEMA received 564 comments relating to eligibility. These are summarized below with FEMA responses. FEMA will provide more information related to eligibility in the NOFO.

Applicant Eligibility. Commenters requested that eligibility be expanded to include other entities beyond States, territories and Tribes that have had a major disaster declaration under the Stafford Act in the seven years prior to the annual application period start date. Commenters also noted a gap in assistance available to homeowners and businesses to improve resiliency of properties. FEMA notes that 42 U.S.C. 5133(b) defines eligible applicants as State and local governments. FEMA also notes that 42 U.S.C. 5133(g) requires that the State or territory must have had a major disaster declaration under the Stafford Act in the seven years prior to the annual application period start date in order to be eligible. Consistent with other HMA programs, local governments are eligible as subapplicants within the BRIC program, but the award is made directly to the State or Territory.

Section 5133(g) also addresses an Indian Tribal government's eligibility. An Indian Tribal government (federally-recognized Tribe) that has received a major Federal disaster declaration under the Stafford Act in the seven years prior to the annual application period start date, or is entirely or partially located in a state that received a

major Federal disaster declaration under the Stafford Act in the seven years prior to the annual application period start date, is eligible to apply under BRIC.¹⁴ A federally recognized Tribe may apply as an applicant or subapplicant. If the Indian Tribal government chooses to apply as a subapplicant through the State, the State must have had a major disaster declaration under the Stafford Act in the seven years prior to the annual application period start date. FEMA has edited the policy to clarify that only federally recognized Tribes are eligible as applicants.

Section 5133 does not authorize private non-profits and other private sector entities such as businesses, industry associations, native corporations, and individuals to apply as applicants or subapplicants. However, FEMA edited the policy to highlight that applicants and subapplicants may apply for funding on behalf of individuals, and businesses, and non-profit organizations.

Hazard Mitigation Plans. Many commenters suggested eliminating the requirement of having a FEMA-approved hazard mitigation plan (HMP) at the time of application, citing this as a barrier to many communities applying to the BRIC program. Commenters recommended only requiring a FEMA-approved HMP at the time of award obligation, as this is all that is required under 44 CFR part 201. FEMA is maintaining the current requirement for an HMP at the time of application. Since an approved HMP is a condition of receiving assistance under 44 CFR part 201, FEMA checks for compliance with this condition at the time of application and obligation to ensure that the applicant meets the eligibility requirements. Requiring the HMP to be in the place at the time of application reduces the likelihood that applicants or subapplicants will not have a FEMA-approved HMP at the time of the award, and be ineligible for funding. If an HMP lapses after a BRIC award has been made, funding will not be stopped. FEMA will, however,

¹⁴ See 42 U.S.C. 5123.

encourage the HMP to be made effective as soon as possible, as a lapsed HMP could jeopardize the applicant's receipt of funds under other FEMA programs.

Discrimination and Social Equity. A number of commenters requested that FEMA distribute BRIC funding in a non-discriminatory manner and give priority to historically marginalized and disadvantaged groups to promote social equity. Commenters also asked FEMA to use a tiered approach where under-resourced or otherwise disadvantaged communities are considered separately from the larger competitive applicant pool. On January 20, 2021, the President issued Executive Order 13985, "Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,"¹⁵ which is designed to pursue a comprehensive approach to advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality. The Executive Order required each agency to assess whether, and to what extent, its programs and policies create or perpetuate systemic barriers to opportunities and benefits for people of color and other underserved groups with the goal of developing policies and programs that deliver resources and benefits equitably to all. The policy already includes three items that contribute toward equity: 1. Inclusion of equity promotion in the Principles of the policy; 2. An increased Federal cost share for small impoverished communities; and 3. A requirement that recipients and subrecipients ensure that the program is accomplished in an equitable and impartial manner. In addition, FEMA is committed to equity and is continuing to assess through the NOFO process how to prioritize funding to deliver resources and benefits equitably. As OMB has emphasized,¹⁶ one approach is to reduce paperwork and administrative burdens, which

¹⁵ 86 FR 7009 (Jan. 25, 2021).

¹⁶ The White House, *Meeting a Milestone of President Biden's Whole-of-Government Equity Agenda*, (Aug. 6, 2021), available at <https://www.whitehouse.gov/omb/briefing-room/2021/08/06/meeting-a-milestone-of-president-bidens-whole-of-government-equity-agenda/>.

might cause serious problems in terms of equity. Regarding a tiered approach, FEMA is researching this topic for future program design considerations.

In addition, recipients of FEMA funding are required to comply with federal statutes that prohibit discrimination in federally funded programs and activities. FEMA will vigorously enforce these nondiscrimination statutes and require recipients to sign assurances of compliance with these laws.

Project Eligibility. Commenters asked if specific project types would be eligible for BRIC funding. The policy allows for traditionally eligible mitigation projects, and also encourages applicants to be innovative with their proposed projects. FEMA will provide more information about eligible project types in the program support materials and webinars. Clarity on some of the project types in response to comments received is provided below:

- Phased projects are eligible.
- Project-scoping activities (formerly known as Advance Assistance) are eligible as a capability- and capacity-building activity and will be limited by the allocation amount.
- Project monitoring is the responsibility of the applicant as stated in 2 CFR part 200 and will be stated in the NOFO. All work funded by the BRIC program must be completed within the period of performance of the grant, which does not allow costs for long-term monitoring after the end of the period of performance.
- Pre-award work that begins construction prior to award or prior to completion of compliance with the National Environmental Policy Act and other applicable environmental laws such as the Endangered Species Act and the National Historical Preservation Act cannot be funded. This requirement applies to the project as a whole regardless of what the Federal share of the project will fund. However, FEMA may approve and fund development of the mitigation

application as pre-award costs in a subapplication. FEMA has edited the policy to clarify this point.

- For other Federal agencies' large projects, FEMA will not provide financial assistance if FEMA determines another Federal agency has more specific authority to support the project. FEMA understands commenters' concerns that the BRIC program could potentially fund very large, expensive projects (such as levee systems and dams), leaving less funding for smaller scale projects that are quicker to implement. However, there is no minimum on the amount of funding requested in the national competition. Additionally, there is a State and Territory allocation that could be used to fund smaller scale projects. Further, consistent with appropriation law principles, BRIC mitigation funds cannot be used as the non-federal cost-share for other federal agency grants.¹⁷

Managed Retreat and Relocation. Commenters asked about the eligibility of managed retreat and relocation projects. Managed retreat and relocation projects are eligible for BRIC funding. Managed retreat and relocation of entire communities are extensive projects with many different components. Applicants that seek funding for retreat and relocation activities should try to align the project components that the BRIC program will be funding with the annual priorities established each year in the NOFO.

Flood Insurance Requirements. Some commenters asked FEMA to waive flood insurance purchase requirements, and others asked FEMA to clarify when flood insurance requirements apply. Commenters also asked how flood insurance requirements are enforced. The purchase of flood insurance for federally-funded acquisition or construction projects in a Special Flood Hazard Area (SFHA) is a statutory requirement under 42 U.S.C. 4012a of the National Flood Insurance Act (NFIA). Community

¹⁷ General Accounting Office Redbook, GAO-06-382SP, Vol. II (3rd ed. Feb. 2006), p. 10-93. <https://www.gao.gov/assets/210/202819.pdf>.

participation in the National Flood Insurance Program (NFIP) is required under 42 U.S.C. 4106 of the NFIA in order to receive Federal assistance for projects in a SFHA. FEMA does not have discretion to waive flood insurance requirements for federally-funded acquisition or construction projects in an SFHA. This requirement is only applicable to NFIP insurable structures. This requirement does not apply to non-building infrastructure, such as roads and bridges, or acquisition or demolition projects. Maintaining private flood insurance as an alternative to NFIP insurance is allowable as long as it is functionally equivalent to a standard NFIP flood insurance policy as stated in 42 U.S.C. 4012(a). Flood insurance requirements are enforced through deed restrictions that ensure flood insurance is maintained for the life of the property.

Coronavirus 2019 (COVID-19). Commenters requested edits to the proposed policy to address the threat of disease outbreaks directly and to allow for eligibility of projects that contribute directly to pandemic-resiliency activities. The statute that establishes the BRIC program, Section 1234 of the Disaster Recovery Reform Act, includes an instruction by Congress to focus mitigation projects on making infrastructure more resilient to natural hazards. Thus, FEMA declines to make any changes to the policy based on these comments. However, due to the nature of the BRIC program, there is an opportunity to use BRIC funds to support critical infrastructure that will also support the COVID-19 response efforts. For example, mitigating the risks to hospitals from hurricanes so that they can remain operational during a disaster. FEMA encourages projects that provide multiple benefits to society.

Code Requirements. FEMA received comments seeking clarity on the code requirements of the BRIC program and requesting that additional, stronger language around codes be added to the policy. FEMA received many suggestions to call out additional codes in the policy, such as plumbing, fire, mechanical, solar, hydronics and geothermal codes. The policy requires that a project must conform with the latest

published editions (meaning either of the two most recently published editions) of relevant consensus-based codes, specifications, and standards, even if the State, Indian Tribal government, or community the project is located in has not adopted the required code(s). A State or Indian Tribal government does not need to have adopted current codes to be an eligible applicant. A project can always go beyond the minimum requirements, and States are encouraged to require subapplicants to meet stronger codes. As there are a plethora of codes that exist, and BRIC is a multi-hazard program, FEMA intentionally did not list all applicable codes for all the different project types. FEMA is in strong support of modern, disaster-resistant codes and encourages projects to implement the most recent codes applicable. The NOFO and program support materials will provide additional information.

Scoring Criteria. Many commenters provided recommendations for project attributes to score higher in FEMA review of projects. The following suggestions were the most frequently requested to receive a higher score: States or Indian Tribal governments with approved enhanced mitigation plans, small impoverished communities, historically disadvantaged communities, critical infrastructure, projects that utilize partnerships, use of best available climate science, communities on frontlines of climate threats, nature-based solution projects, and non-monetary benefits. There were also additional requests for other project attributes to receive higher scores. FEMA is taking these considerations into account as it develops the NOFO, particularly to the extent that the recommendations are consistent with the objectives of Executive Orders 14008¹⁸, 13990¹⁹ and 13985. Scoring criteria are identified on an annual basis through the NOFO to allow the program to remain flexible and evolve over time.

Small Impoverished Communities

¹⁸ E.O. 14008, *Tackling the Climate Crisis at Home and Abroad*, 86 FR 7619 (Jan. 27, 2021).

¹⁹ E.O. 13990, *Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis*, 86 FR 7037 (Jan. 20, 2021).

FEMA received 64 comments relating to small impoverished communities. These are summarized below with FEMA responses.

Ten Percent Cost Share. Commenters asked FEMA to eliminate the minimum ten percent non-Federal cost share requirement for small impoverished communities, noting that even a ten percent non-Federal cost share can serve as an impediment to funding. FEMA understands these concerns, but pursuant to 42 U.S.C. 5133(h)(2) FEMA's contribution is limited to 90 percent of project costs. Contributions of cash, third-party in-kind services, materials, or any combination thereof, may be accepted as part of the non-Federal cost share.

Eligible Communities. FEMA received requests to allow more types of communities, such as States and Tribes with enhanced mitigation plans, to be eligible for a 90 percent Federal cost share. Pursuant to 42 U.S.C. 5133(h)(2), however, FEMA may contribute up to 90 percent only to small impoverished communities. Otherwise, the maximum cost share authorized is 75 percent per 42 U.S.C. 5133(h)(1).

Meeting the Needs of Small Impoverished Communities. Commenters requested that more be done to respond to the needs of small impoverished communities beyond the increased allowable Federal cost share. FEMA appreciates this concern and has removed the unemployment metric from "small impoverished communities" to be more inclusive and is also taking all comments into consideration as it develops the scoring criteria in the NOFO, technical assistance and program support materials.

Benefit Cost Analysis (BCA) process. Commenters noted the BCA process makes it more difficult for smaller, less densely populated communities to show cost effectiveness compared to urban communities. FEMA notes that 42 U.S.C. 5133(f) requires all financial assistance awarded on a competitive basis for BRIC to be used for mitigation activities that are cost effective. FEMA is evaluating ways to better capture

the value of critical facilities, including specific implications for small impoverished communities.

Funding

FEMA received 135 comments relating to funding. These are summarized below with FEMA responses.

DRRA Funding Requirements. Commenters expressed concerns about the methodology of determining the amount of funding available for the BRIC program annually. Commenters thought the phrasing that FEMA “may” set aside 6 percent indicates uncertainty as to the amount of funding available. FEMA notes the funding source and related provisions, including the 6 percent set aside, and the 180-day requirement to estimate the aggregate amount of grants following major disasters, are set forth at 42 U.S.C. 5133. FEMA is required to perform the 6 percent calculation within 180 days of the disaster and is authorized to set it aside to fund the BRIC program. Funding amounts will be announced in the NOFO for each grant cycle.

Competitiveness. Commenters requested clarification and changes to the competitive and non-competitive aspects of the BRIC program. FEMA offers the following clarifications:

- State and territory allocations (set asides) are non-competitive.
- The Tribal set aside is non-competitive, unless the submitted applications exceed the allocated amount.
- The remaining funding will be competitive at the national level for mitigation projects.

Commenters also asked for BRIC funding to be structured as a block grant or revolving loan fund (RLF) program. FEMA notes that the BRIC program is statutorily defined as a categorical project-based grant program, which does not allow for a block

grant or RLF structure. Additionally, 42 U.S.C. 5133(f) requires that the majority of the funding be awarded competitively.

Other Funding Clarifications. Commenters asked for clarity about cost share and management costs. FEMA offers the following clarifications:

- The policy permits applicant and third party in-kind contributions.
- Private funding is eligible for the non-Federal cost share. More information about the cost share will be provided in the NOFO.

Additionally, FEMA agrees with commenters requesting support for management costs and has changed the policy to provide 100 percent Federal funding for management costs. This approach is also consistent with FEMA’s Hazard Mitigation Grant Program (HMGP).

Benefit Cost Analysis

FEMA received 49 comments relating to benefit-cost analysis (BCA). These are summarized below with FEMA responses.

Discount Rate. Commenters inquired about the discount rate of 7.0 percent used for BCA for HMA grant programs. They believe the Office of Management and Budget (OMB) Circular No. A-94, “Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs” (rev. October 29, 1992)²⁰ is “outdated” and discount rates listed in the circular do not accurately reflect current economic conditions nor do they address the non-stationarity of changing natural hazard conditions that many BRIC projects will likely address. Pre-disaster hazard mitigation measures must be cost-effective under 42 U.S.C. 5133(b). OMB Circular A-94 applies to Federal programs and sets the requirements for conducting benefit-cost and cost-effectiveness analyses. FEMA cannot revise OMB Circular A-94 and is required to follow it. Thus, FEMA declines to make

²⁰ <https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/assets/OMB/circulars/a094/a094.html>.

any changes to the policy based on these comments. Commenters who believe OMB Circular A-94 is outdated should reach out directly to OMB.

Changing Frequency and Magnitude of Future Natural Hazard Events.

Commenters indicated that accounting for non-stationarity of future natural hazard events, including the impacts of the climate crisis, will be necessary and should be mandatory, and inquired how to account for changing frequency and magnitude of natural hazard events over the life of a project in a benefit-cost analysis. While FEMA's BCA tool does have a sea level rise component, the commenters stated the current tool does not account for changes in precipitation, stream flow, snow melt, or severe storm frequency. FEMA appreciates the comment. In order to bolster resilience to the impacts of climate change, FEMA is currently looking into how to incorporate the full range of benefits that address changing hazard risk and mitigate the risk of climate change into its hazard mitigation project BCAs. For example, FEMA is working with National Oceanic and Atmospheric Administration (NOAA) and U.S. Army Corps of Engineers (USACE) to leverage their research into the quantification of benefits from nature-based solutions and green infrastructure which will help FEMA fund these project types. If the jurisdiction or community has studies or other information from authoritative sources that model future risks, that information can be incorporated into the BCA by the applicant or subapplicant. The data used to adjust the default data in the BCA tool must be provided to FEMA to ensure that the data source is reliable and that the adjustment to the default data was correct and meets the requirements of OMB Circular A-94.

Streamlining the BCA Process. Commenters inquired about opportunities to streamline the benefit-cost analysis process. They find the current process to be quite challenging, particularly the amount of time and effort to assemble the backup documentation. Many subapplicants have limited staff and do not have the resources available to compile this documentation. Commenters suggested various solutions,

including using other Federal agencies' BCA tools, conducting analyses at the neighborhood or watershed scale, accepting reasonable assumptions by applicants and subapplicants, and allowing small impoverished communities to have projects with benefit-cost ratios less than 1.0. FEMA appreciates the concern and allows the use of alternate BCA tools. At the same time, FEMA must approve the use of such tools in writing prior to the applicant/subapplicant submitting the grant application. FEMA intends to make this process as simple as possible. Applicants and subapplicants are allowed to use reasonable assumptions and supporting data in applications. FEMA is required to comply with the requirements of OMB Circular A-94 to demonstrate cost-effectiveness.

Pre-Calculated Benefits. FEMA received multiple inquiries about pre-calculated benefits. Commenters asked when updates to currently used standard values will occur to reflect current market conditions and if adjustment factors can be applied to reflect differences in local market conditions. They also inquired about developing pre-calculated environmental, social, and cultural benefits and/or incorporating these elements into existing pre-calculated benefits. Lastly, some comments about generators and flood risk reduction projects requested more pre-calculated benefits related to these types of projects. FEMA is constantly working to improve the BCA process, including regularly updating current values and developing additional pre-calculated benefits. FEMA does allow applicants and subapplicants to adjust pre-calculated benefit amounts using the most current locality multipliers included in industry accepted construction cost guides. If a multiplier is used, a copy of the source document must be included as part of the grant application. FEMA already has developed some pre-calculated ecosystem services benefits. Their use previously was restricted to specific project types but now can be applied more broadly.

Co-Benefits. In addition to ecosystem and environmental benefits, commenters want to be able to include other co-benefits in their BCAs. These co-benefits generally center around disadvantaged communities; cultural, historic, and sacred sites; and subsistence-related resources and activities. Some of these types of benefits are not easily quantified and captured in a traditional BCA. Even if they cannot be quantified, they can and should be mentioned as relevant benefits. (OMB Circular A-4, and OMB's Regulatory Impact Analysis: A Primer, contains helpful guidance on how to deal with benefits that are difficult or impossible to quantify.) FEMA recognizes that culturally significant resources are unique, and allows the applicant or subapplicant to refer to cultural, historic, and sacred resources, and to the extent feasible, to assign a monetary value to them. Established methods may be available to allow such assignments. See George Alexandrakis et al., *Economic and Societal Impacts on Cultural Heritage Sites, Resulting from Natural Effects and Climate Change*, 2 Heritage 279 (2019). The applicant or subapplicant must provide documentation from reliable sources that substantiates how the value of the resource was determined. FEMA encourages applicants and subapplicants to include additional relevant information in their project narrative, such as those associated with co-benefits that may not be easily quantified, to provide FEMA with a more comprehensive understanding of the project that could help to inform award decisions. This approach is consistent with Executive Order 13563, which recognizes that some costs may not be quantifiable, and also Executive Order 13990, which acknowledges that "accurate social cost is essential for agencies to accurately determine the social benefits of reducing greenhouse gas emissions when conducting cost-benefit analyses of regulatory and other actions."²¹

Grant Administration and Management

²¹ E.O. 13990, *Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis*, 86 FR 7037 (Jan. 20, 2021).

FEMA received 86 comments relating to grant administration and management. These are summarized below with FEMA responses.

Period of Performance. FEMA received comments to clarify the period of performance (POP). Commenters requested a longer POP than the 36 months currently defined. FEMA changed the policy to clarify when the start of the POP occurs and when a longer POP may be requested. The beginning of the POP remains linked to the date of Federal award. FEMA removed the reference to “highly complex projects” in the policy to allow broader flexibility for FEMA to grant a longer POP on a case-by-case basis.

Monitoring. Commenters asked if FEMA will be monitoring the BRIC program and projects. FEMA will monitor as required by 2 CFR part 200 and will be stated in the NOFO. FEMA continuously assesses processes and the success of its programs to identify opportunities for improvement.

III. Final Policy

FEMA is finalizing the policy as follows. Line numbers refer to numbering from the final policy.

- In response to concerns of small communities that public infrastructure size will differ for differently sized communities, FEMA removed “large-scale” before “public infrastructure” in line 42.
- In lines 46-48, FEMA added the following principle: “Promote equity, including by helping members of disadvantaged groups and prioritizing 40 percent of the benefits to disadvantaged communities as referenced in Executive Order (EO) 14008 in line with the Administration’s Justice40 Initiative.”
- To address requests from commenters to support consideration of future conditions, FEMA edited lines 49-53 to read: “Support the adoption and enforcement of building codes, standards, and policies that will protect the health, safety, and general welfare of the public, taking into account future conditions,

prominently including the effects of climate change, and have long-lasting impacts on community risk-reduction, including for critical services and facilities and for future disaster costs.”

- In lines 107-108, FEMA added: “FEMA may identify additional criteria in the annual NOFO to allocate available funding.”
- To address requests from commenters to support management costs, FEMA added a new sub-bullet in line 113: “FEMA will provide 100 percent Federal funding for management costs.”
- For commenters who noted that the Funding section has numerous references to eligible entities and applicants that would be better understood if the eligibility section came before it, FEMA reordered the “Requirements” section so that “Applicant and Subapplicant Eligibility” comes before “Funding” in lines 54 to 128.
- To address comments asking for clarification of eligibility for different types of entities:
 - FEMA added “Federally recognized” to predicate “Indian Tribal governments” in line 61 in order to clarify that the Tribal-set aside is limited to federally-recognized Tribes.
 - FEMA added “Individuals, businesses, and non-profit organizations are not eligible to apply for HMA funds; however, an eligible Applicant or subapplicant may apply for funding on behalf of individuals, businesses, and non-profit organizations” to lines 69 to 72. This text clarifies how individual homeowners and businesses may receive further assistance.
- To address commenters’ requests to clarify that updates to mitigation plans are eligible for capability- and capacity-building funds, FEMA edited line 138 to read: “...develop or update mitigation priorities and plans.”

- To address commenters' request for a sentence structure edit in lines 1596 to 162, FEMA reordered the sentence to end with the citation in order to emphasize that the requirement is to comply with environmental and historic preservation regulations.
- To address commenters' request for a sentence structure edit in lines 163 to 164, FEMA reordered the sentence to end with the citation in order to clarify the intent is to require compliance with floodplain and other applicable land use laws and regulations.
- In lines 165-166, FEMA added: "Any FEMA directive or policy implementing the Federal Flood Risk Management Standard (FFRMS)."
- For commenters who asked FEMA to define the term "non-construction," FEMA intended to mean capability- and capacity-building activities. FEMA replaced the term "non-construction" with "Capability- and capacity-building activities," and moved the sentence to line 174. FEMA also added on lines 178-179 the sentence, "Already initiated or completed capability- and capacity-building activities are not eligible for funding." FEMA also added a new sentence on lines 194-195 to completely address limits on eligibility: "Projects for which ground disturbance has already been initiated or completed are not eligible for funding."
- For editorial purposes, FEMA edited lines 196-199 to read: "It must be cost-effective and designed to increase resilience and reduce risk of injuries, loss of life, and damage and destruction of property, including critical services and facilities."
- In line 202, FEMA removed the phrase: "...through completion of a benefit cost analysis conducted in compliance with OMB Circular A-94."
- To address commenters' requests, lines 207-211 were edited to clarify that if a project is located in the Special Flood Hazard Area (SFHA), the jurisdiction in

which the project is located must be participating in the National Flood Insurance Program (NFIP) and not on probation, suspension, or withdrawn. FEMA also added in lines 215-218 the following clarification: “If there is a transfer of ownership of the structure, the requirement of obtaining and maintaining flood insurance for the life of the structure applies to the new owner and any successive owners.”

- In lines 219-220, FEMA added, “The project must comply with any FEMA directive or policy implementing the Federal Flood Risk Management Standard (FFRMS).”
- In response to commenters’ notes to clarify that eligible pre-award costs should be limited to development of the mitigation application, FEMA edited line 234 to add the words “the application for” after the words “the development of.”
- In order to address commenters’ requests to clarify the POP, and requests to allow for a longer POP, FEMA edited text in lines 249 to 253. FEMA deleted “effective” and “generally” as the beginning of the POP remains linked to the date of Federal award. FEMA also deleted “for highly complex projects” and changed language on lines 250-252 to: “The applicant may submit a request for a longer POP in the application for FEMA to review and approve.” This change gives FEMA broader flexibility to grant a request for a longer POP.
- In answer to commenters’ questions, FEMA edited lines 312 to 313 to confirm that the policy will remain intact after it is incorporated into guidance. FEMA deleted the following language: “at which point this policy will be superseded.”
- To add clarity, FEMA added subsections titled “Definitions” and “Monitoring and Evaluation” to the Additional Information section.
- FEMA also made minor, nonsubstantive corrections for grammar and clarity.

FEMA is now issuing the final BRIC policy, which is available at <http://www.regulations.gov> and on the FEMA website at <https://www.fema.gov/grants/mitigation/building-resilient-infrastructure-communities>.

The final policy will not have the force and effect of law and is not meant to bind the public in any way. The guidance document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

Under the Congressional Review of Agency Rulemaking Act (CRA), before guidance can take effect, the Federal agency promulgating the guidance must submit to Congress and to the Government Accountability Office (GAO) a copy of the guidance; a concise general statement describing the guidance, including whether it is “major” within the meaning of the CRA; and the proposed effective date of the guidance.²² A “major” guidance document is one that has an annual effect on the economy of \$100,000,000 or more; results in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or has significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Pursuant to the CRA, the Office of Information and Regulatory Affairs designated this guidance as “major” within the meaning of the CRA as defined by 5 U.S.C. 804(2), as the annual effect on the economy will be over \$100,000,000 in transfers. As such FEMA has sent the final BRIC policy to the Congress and to GAO.

Authority: Sec. 1234, Pub. L. 115-254, 132 Stat. 3438.

²² See 5 U.S.C. 801-808. Although the statutory language only discusses rules, Congress has made it clear that the CRA covers guidance documents as well. See, e.g., “The Congressional Review Act (CRA): Frequently Asked Questions,” Congressional Research Service, at 7 (Jan. 14, 2020), *available at* <https://crsreports.congress.gov/product/pdf/R/R43992> (last accessed Aug. 31, 2020).

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